

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 5, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP812
STATE OF WISCONSIN**

Cir. Ct. No. 2011GN122

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE GUARDIANSHIP AND PROTECTIVE PLACEMENT OF
SANDRA N.:**

BROWN COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

SANDRA N.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
TIMOTHY A. HINKFUSS, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve
Judge.

¶1 PER CURIAM. Sandra N. appeals an order finding her incompetent and in need of a guardian and protectively placing her in a nursing home. She

contends the circuit court relied on hearsay, without which there is insufficient evidence to establish her incompetency. We reject that argument and affirm the order.

¶2 The Department of Human Services presented two witnesses. Barbara Bloom-Mikulsky, from Brown County Adult Protective Services, testified and filed a comprehensive evaluation. Bloom-Mikulsky concluded

Sandra is in complete denial of her limitations and is unwilling to accept the help that is offered to her. She is at severe risk of self-neglect of person due to her denial of limitations, evaluating information and making necessary decisions to meet the essential requirements for health and safety.

She further concluded Sandra is

independently unable to perform the requirements for physical health and safety to provide for the healthcare, food, shelter, clothes, personal hygiene and other care without risk of serious physical injury or illness. Sandra N. is in denial of any limitations she has in these respects and continues to insist she can do all these things without assistance and often refuses cares [sic].

¶3 A psychologist, Dr. Edith Wolf, also testified and presented a ten-page report based on her interview with Sandra and review of collateral sources of information. The report indicated Sandra suffers from a serious and persistent mental illness, bipolar disorder, and that she has a history of drug and alcohol abuse. Wolf concluded Sandra's prognosis regarding the bipolar disorder is "probably fair." Sandra's physical ailments included a stroke which caused some paralysis, seizures, asthma, a bowel disorder and a knee problem. Wolf wrote that Sandra has exhibited grandiose thinking and questionable judgment, has been verbally abusive, and tends to minimize her physical limitations. When Wolf asked Sandra what medications she was taking, she could only name two of them

and, when asked what they were for, she was not sure. Sandra denied needing help with anything, but later complained that the nursing staff does not adequately attend to her toileting needs in the middle of the night. Wolf opined that Sandra is incompetent because of poor judgment, and the inability to make good decisions regarding finances and her health.

¶4 Regarding the diagnosis of bipolar disorder, Wolf did not know who made the diagnosis or when it was made. She did not make the diagnosis herself. Sandra's counsel objected to the testimony regarding bipolar disorder and moved to strike it as hearsay, citing *Walworth County v. Theresa B.*, 2003 WI App 223, 267 Wis. 2d 310, 671 N.W.2d 377, for the proposition that a testifying expert must make an independent diagnosis. The court overruled the objection and denied the motion to strike the testimony, concluding Wolf was not merely a conduit for the opinions of other professionals. Rather, Wolf evaluated the information, created her own diagnosis and prognosis, and appropriately concluded Sandra was incompetent.

¶5 The circuit court properly admitted Dr. Wolf's testimony and report over Sandra's hearsay objection. On the ultimate issues, whether Sandra was impaired and needed a guardian under WIS. STAT. § 54.10(3)(a)¹ and whether she was in need of protective placement under WIS. STAT. § 55.08(1), the issues for which expert testimony is required, the record shows Wolf made an independent evaluation. Consistent with WIS. STAT. § 907.03, Wolf appropriately relied on Sandra's medical record when forming her opinion. It was not necessary for Wolf to independently confirm the diagnosis of bipolar disorder in order to conclude

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

Sandra was incompetent, in part based on Sandra's inability to predictably take medication. In addition, Wolf's evaluation of Sandra's prognosis also suggests that Wolf confirmed the diagnosis. A prognosis necessarily implies that a diagnosis has been made.

¶6 *Theresa B.* does not compel a different result. In that case, we concluded an expert witness cannot merely summarize the findings and opinions of others, but must reach an independent opinion only after a disinterested review of all of the relevant records. *Id.*, ¶1. In *Theresa B.*, the psychologist did not independently interview the patient because the patient refused. The psychologist then conducted a paper review of the medical records. *Id.*, ¶4. This court agreed with the Seventh Circuit that a patient's right to adequately cross-examine witnesses would be compromised if an expert's testimony was based "entirely on hearsay reports." *Id.*, ¶9. Therefore, it is impermissible to call an expert witness who has not personally examined an individual, and merely acts as a conduit for the opinions of others. *Id.*, ¶13. In *Theresa B.*, even though the psychologist was unable to interview the patient, he was not merely a conduit for the opinions of other professionals. *Id.*, ¶19. It was sufficient that a brief visit the psychologist had with Theresa in preparation for the evidentiary hearing "cemented his opinion" regarding the diagnosis. In this case, because Dr. Wolf had a forty-five minute meeting with Sandra, sufficient to form an opinion regarding the prognosis for Sandra's bipolar disorder, Wolf, in effect, knowledgeably confirmed the diagnosis.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

